

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

ANTHONY C. MATHIS, SR.,

Plaintiff,

v.

DALLAS VA HEALTH CARE,

Defendant.

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Civil Action No. **3:09-CV-2195-L**

ORDER

Before the court are the Findings and Recommendation of the United States Magistrate Judge, filed February 17, 2010. Plaintiff did not file objections.

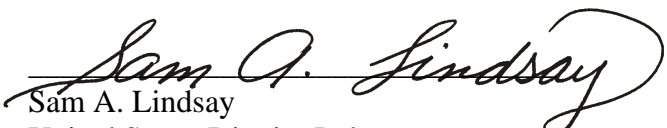
Plaintiff filed his *pro se* complaint on November 17, 2009. On November 19, 2009, the court warned Plaintiff that his “complaint is not in compliance with Federal Rules of Civil Procedure 8(a),” and warned him that “[f]ailure to comply with this order will result in a recommendation that the complaint be dismissed for failure to prosecute pursuant to Federal Rule of Civil Procedure 41(b).” Notice of Deficiency and Order (Nov. 19, 2009) 1 (original emphasis). The court also warned him that his motion to proceed *in forma pauperis* was deficient. The court extended Plaintiff’s deadline to comply with its order until January 19, 2010. On January 15, 2010, he filed a “Notice of Withdrawal.” The court warned Plaintiff again on January 20, 2010, that failure to comply with the deficiency order would result in it construing his notice of withdrawal as a request for voluntary dismissal pursuant to Rule 41(a)(1)(A)(i) of the Federal Rules of Civil Procedure and recommending dismissal of his case. On January 26, 2010, Plaintiff filed an affidavit in support of his motion to proceed *in forma pauperis*.

The magistrate judge recommends construing Plaintiff’s January 15, 2010 notice of withdrawal as a request for voluntary dismissal pursuant to Rule 41. In the alternative, he recommends dismissing

this case for want of prosecution pursuant to Rule 41(b) for failure to comply with a court order. The court determines that Plaintiff was repeatedly warned to comply with Rule 8 but failed to do so. The court will not construe his notice of withdrawal as a notice of voluntary dismissal because Plaintiff did file another document after it was filed, though it did not cure his failure to comply with the court's November 19, 2009 notice of deficiency with respect to Rule 8.

Having reviewed the pleadings, file, and record in this case, and the findings and conclusions of the magistrate judge, the court determines that the findings and conclusions are correct in part. The magistrate judge's findings and conclusions are therefore **accepted in part** as those of the court. The court **rejects** the magistrate judge's recommendation to construe Plaintiff's January 15, 2010 filing as a notice of voluntary dismissal but **accepts** the recommendation to dismiss this action without prejudice for failure to comply with court orders. The court therefore **dismisses** this action **without prejudice** pursuant to Rule 41(b) of the Federal Rules of Civil Procedure for failing to comply with court orders.

It is so ordered this 8th day of March, 2010.


Sam A. Lindsay
United States District Judge